IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2542 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2543 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2544 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2545 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2546 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2547 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2548 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2549 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2550 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2551 OF 2004

Anand Bhatt ...Petitioner

Versus

Thermax Ltd. & Another ...Respondents

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Mr. K.G.Menon, Senior Advocate with Mr. J.L. Phoujdar, Advocate for Petitioner

Mr.K.G. Mhatre i/b M/s. Doijode & Associates, Advocate for Respondent No.1.

Mr. S.R.Shinde, APP in W.P. No. 2542 & 2543/04
Mr. B.H.Mehta, APP in W.P. No. 2544 & 2545/04
Mr.V.B. Konde Deshmukh APP in WP. No.2546 & 2547/04
Mr.Rajesh More, APP in WP No. 2548 & 2549/04
Mr. R.S.Khadapkar, APP in WP No.2550 & 2551/04.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 6TH OCTOBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner, learned advocate for the respondent i.e. original complainant and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case Nos.1077/2001, 1194/2001, 1076/2001, 1078/2001, 1079/2001, 1082/2001, 1083/2001, 1186/2001, 1193/2001 and 1195/2001 which are pending in the Court of learned J.M.F.C., Kirkee at Kirkee. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The petitioner had preferred an application for recall of process before the learned Magistrate. The said application came to be rejected. Being aggrieved by the said order, revision came to be preferred by the petitioner before the Sessions Court. However, thereafter, in view of the order of the Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal & Anr, reported in (2004) 7 SCC 338, the petitioner withdrew the said revision and approached this Court.

. In view of the decision of the Supreme Court in the case of Adalat Prasad (supra), it is clear that the Magistrate does not have power to recall the process, hence, I am not inclined to interfere with the order of the Magistrate rejecting the application of the petitioner for recall of process.

4. However, for the reasons recorded in the decision

of this Court in the case of **V.K. Jain & Ors. Vs. Pratap Vs. Padode and Anr, reported in 2005(3) Mh.L.J. 778,** in my opinion, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of four weeks from today. The learned advocate for the respondent No. 1 i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. It is made clear that the revision shall be preferred against the order of the Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process.

7. Writ Petitions are disposed of.

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